IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITON NO. 880 (MS) OF 2006

Nagar Palika Parishad,
Haldwani, Kathgodam,
Through its Executive Officer. .....Petitioner.

Versus

1. Chief Judicial Magistrate, Nainital.
2. Charu Chandra, S/o Shri R.D. Tiwari.
3. Smt. Rewati Tewari, W/o Shri R.D. Tiwari,
4. Kishan Chandra S/o Shri R.D. Tewari,
5. Naveen Chandra, S/o Shri R.D. Tewari,

Respondents No. 2 to 5 all are R/o House No. 6-6, Talli Bamori, Mukhani, Haldwani, District - Nainital.

.....Respondents.

Dated: 12.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Ashish Joshi, Advocate for the petitioner and Standing Counsel for the respondent no.1.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the notice dated 18.08.2005 passed by the Chief Judicial Magistrate, Nainital (Annexure no. 1 to the writ petition). Further prayer has been made for a writ of certiorari quashing the notice dated 30.06.2006 passed by the learned Chief Judicial Magistrate, Nainital (Annexure No. 2 to the writ petition).

Briefly stated, the proceedings for assessments were started and demand notice was issued for the year, 2002-03 in respect of House No. 6-6 Talli Bamori, Mukhani, Haldwani, District – Nainital.

The present proceeding relates to the year, 2002-03 against which an appeal has been filed before the Chief

Judicial Magistrate being Appeal No. 15 of 2002, where the Chief Judicial Magistrate on 18.08.2005 has passed the order that the refund is outstanding in pursuance of the earlier order passed in Appeal relating to the same parties.

Sri Ashish Joshi, Advocate for the petitioner has submitted that the present order relates to the year, 2002-03 and as such any recovery proceedings in respect of earlier demand notice concerning Execution Case No. 79 of 2006 though between the same parties cannot be clubbed in the present proceedings as both relate to the separate assessment year.

Looking to the submission of the petitioner, the Chief Judicial Magistrate is directed to register the separate execution cases with regard to the earlier years and proceed accordingly subject to the finality of the orders passed in those proceedings.

Subject to the aforesaid observations, the order-dated 18.08.2005, stands modified to the extent that it will be open for the Chief Judicial Magistrate to register separate execution cases for the refund of the amount of the respondents and proceed to decide in accordance with law subject to the finality of orders.

So far as the present proceedings are concerned, the same may be decided independently.

Subject to the aforesaid observations, writ petition is disposed of.

(Rajesh Tandon, J.)

12.07.2006
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